

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

CUDAHY CITIZENS
CHALLENGING COUNCIL
CORRUPTION,

Appellant,

v.

CITY OF CUDAHY et al.,

Respondents.

B296330

(Los Angeles County
Super. Ct. No. BS174212)

APPEAL from orders of the Superior Court of Los Angeles
County. Mary H. Strobel, Judge. Appeal dismissed.

Leibold McClendon & Mann, John G. McClendon for
Appellant.

Law Offices of Glenn Ward Calsada, Glenn Ward Calsada;
Leal & Trejo, Maribel S. Medina for Respondents.

In 2018, four members of the Cudahy City Council removed the fifth member, Jack Guerrero from office. The voluntary association Cudahy Citizens Challenging Council Corruption (Citizens), of which Guerrero was a member, filed a petition and complaint against the city, alleging the city violated the Brown Act by holding secret meetings resulting in his ouster. Citizens sought a writ of mandate and injunction compelling Guerrero's reinstatement. The city responded with a special motion to strike the complaint as a strategic lawsuit against public participation (SLAPP), alleging the lawsuit was designed solely to regain Guerrero's position on the council. The Citizens opposed the motion, arguing the action was not subject to anti-SLAPP law (Code Civ. Proc., § 425.16 et seq.) because it was brought solely in the public interest and on behalf of the general public. The trial court found the lawsuit was brought at least partially in Guerrero's interest, as it sought his reinstatement, and therefore fell within the anti-SLAPP law. The court granted the motion and entered judgment striking Citizens' petition. Citizens appealed.

While the appeal was pending, three of the four remaining city council members were voted out of office, and Guerrero was voted back in. As a result, both sides now agree the appeal is moot. Citizens nevertheless requests that we reach the merits of its appeal on the ground that it presents an issue of public interest that is capable of repetition but would perpetually evade review. We disagree, and thus dismiss the appeal as moot.

BACKGROUND

A. Factual Backdrop

We take the facts alleged in the complaint as true for purposes of this appeal.

In 2013, Cudahy voters elected Guerrero, a certified public accountant with an MBA from Harvard Business School, to the city council. As Mayor, Guerrero ushered in fiscal reforms, engaged the State Controller to conduct a forensic examination of city finances, and complained to the Los Angeles County District Attorney's Office's Public Integrity Division about repeated cancellation of city council meetings.

In 2018, Guerrero ran for State Treasurer, which necessitated campaign activities that took him away from the city. Taking advantage of this fact, the other four members of the city council deliberately canceled five meetings that Guerrero could attend, and held only meetings that his schedule prevented him from attending. The council then declared that he had abandoned his seat within the meaning of Government Code section 36513, and by a 4-0 vote removed him from office.

On July 17, 2018, Citizens filed a verified (by Guerrero) petition and complaint against Cudahy, seeking a declaration that the city council had violated the Brown Act (Gov. Code, § 54950 et seq., requiring all meetings of the legislative body of a local agency to be open and public) and an injunction reinstating Guerrero.

B. Petition and Complaint

1. Anti-SLAPP Public Interest Exception

Because some city council deliberations constitute protected activity for purposes of the anti-SLAPP law, a lawsuit predicated on such deliberations could be stricken as a SLAPP. (*City of Montebello v. Vasquez* (2016) 1 Cal.5th 409, 413.)

However, Code of Civil Procedure section 425.17, subdivision (b), excepts lawsuits brought solely in the public interest from anti-SLAPP law. It states that Code of Civil

Procedure “Section 425.16 does not apply to any action brought solely in the public interest or on behalf of the general public if all of the following conditions exist: [¶] (1) The plaintiff does not seek any relief *greater than or different from the relief sought for the general public* or a class of which the plaintiff is a member. . . . [¶] (2) The action, if successful, would enforce an important right affecting the public interest, and would confer a significant benefit, whether pecuniary or nonpecuniary, on the general public or a large class of persons. [¶] (3) Private enforcement is necessary and places a disproportionate financial burden on the plaintiff in relation to the plaintiff’s stake in the matter.” (Italics added.)

2. Exception Allegation

To leverage this exception, Citizens alleged: “No matter how any portion of this pleading’s allegations or prayer is construed, in no way does Petitioner intend to assert a claim or seek relief that is inconsistent with the following parameters: (1) Petitioner does not seek any relief greater than or different from the relief sought for the general public or for a class of which Petitioner’s members residing within the City’s geographical jurisdiction are themselves members. (2) This lawsuit seeks to enforce at least one important right affecting the public interest and to confer at least one significant benefit, whether pecuniary or non-pecuniary, on the general public or a large class of persons. (3) Private enforcement is necessary and places a disproportionate financial burden on Petitioner in relation to its stake in the matter.”

In essence, Citizens alleged that no matter how the lawsuit was construed, it was not a SLAPP.

C. Anti-SLAPP Motion and Ruling

Cudahy moved to strike the petition and complaint as a SLAPP. The trial court found that Citizens' bare assertion that the lawsuit was not a SLAPP failed to establish that it was brought solely in the public interest. It found Guerrero had personal interests—including a financial interest—in maintaining his council seat, and the petition sought relief that personally benefitted him. The petition was therefore not solely in the public interest, and the public interest exception did not apply. The court further found that Citizens conceded that Cudahy's city council deliberations arose from protected activity, and failed to show a probability of prevailing on its claim. It therefore granted Cudahy's motion and dismissed the petition and complaint.

DISCUSSION

Citizens contends that the exception set forth in Code of Civil Procedure section 425.17, subdivision (b), which on its face applies to actions brought "solely" in the public interest, also applies when an action would benefit not only the public but a private individual as well.

As noted above, both sides agree that events subsequent to Guerrero's ouster, including his re-election and the replacement of three of the four city council members who previously voted for ousting Guerrero, have mooted this appeal. We agree.

Generally, an appellate court's jurisdiction extends only to actual controversies for which it can grant effective relief. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1158.) If subsequent acts or events render the issues raised in an appeal moot, those issues no longer present a justiciable controversy. (*Ibid.*) However, an appellate court may exercise its discretion and

decide on the merits of an otherwise moot appeal when: (1) a material question remains before the court for determination; (2) the same controversy between the parties may recur; or (3) the case involves an issue of broad public interest “capable of repetition, yet evading review.” (*Ibid.*)

Here, Citizens prayed for the following relief: A declaration declaring that Cudahy failed to comply with the Brown Act in its machinations to remove Guerrero from his position on the city council, rendering the removal “null and void”; a declaration that the city must comply with the Brown Act before taking any action to remove him; and a writ of mandate requiring the council to rescind its removal resolution. But because Guerrero has returned to the council, we can grant no effective relief. The only relief we could possibly grant, a court declaration that the council must comply with the Brown Act before removing Guerrero in the future, would be no more “effective” than the Legislature’s declaration in the Act itself to that same effect.

Citizens argues we should nevertheless reach the merits of its appeal because the issue presented is one of broad public interest and is capable of repetition but would perpetually evade review. We disagree.

Citizens identifies as of broad public interest the issue whether a public association can be precluded from claiming a public interest exception to anti-SLAPP law simply because a single group member would obtain an ancillary benefit from the litigation. It informs us that over 245 anti-SLAPP motions were filed in state courts in 2017, and 34 published and 169 unpublished appellate opinions were issued. But this establishes only that litigation under the anti-SLAPP is robust, not that the

issue identified by Citizens draws any particular attention. We are aware of no cases or circumstances involving Citizens' issue.

Nor do we agree that the issue is likely to recur. The Cudahy City Council has changed, Guerrero is on it, and there seems no reasonable basis to think it will violate the Brown Act in any future effort to remove him or anyone else.

We therefore conclude the appeal is moot and no exception applies.

DISPOSITION

The appeal is dismissed. Both sides to bear their own costs.
NOT TO BE PUBLISHED

CHANNEY, J.

We concur:

BENDIX, Acting P. J.

SINANIAN, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.